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No. _____

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IN THE SUPREME COURT

OF THE

UNITED STATES

OCTOBER TERM, 1983

STATE BOARD OF EQUALIZATION

Petitioner,

v.

TRAILER TRAIN COMPANY, a corporation, and RAILBOX COMPANY, a corporation,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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QUESTIONS PRESENTED

1. In petitioner Board's property tax assessment of respondent's railroad cars, did petitioner comply with section 306 of the Railroad Revitalization and Regulatory Reform Act [1] (4-R Act) by applying a tax rate which was consistent with the average tax rate applied to all other commercial and industrial personal property in California, or must the Board's tax rate be comparable with whatever type of California tax role which contains the majority of California's commercial and industrial property of all types (both real and personal property)?

2. Should certiorari be granted to resolve the conflict between the Ninth Circuit's decision in this case and the Fourth Circuit's decision in Clinchfield

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1. The Railroad Revitalization and Regulation Reform Act of 1976 is codified at 49 U.S.C. 11503 et. seq.

Railroad Company v. Lynch (Fourth Circuit 1983) 700 F.2d 126?

3. In granting injunctive relief under the 4-R Act without first determining whether the standard prerequisites for a preliminary injunction had been met, is the Ninth Circuit's decision inconsistent with Weinberger v. Romero-Barcelo (April 22, 1983) ___ U.S. ___, 72 L.Ed.2d 91?

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The State Board of Equalization of the State of California prays that a writ of certiorari issue to review portions of the decision of the United States Court of Appeals for the Ninth Circuit, filed in the above-entitled case on January 25, 1983.

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OPINION BELOW

The opinion of the District Court, printed in Appendix A hereto, infra, p. A1, is reported at 511 F. Supp. 553 (N.D.Cal. 1981). The opinion of the Court of Appeals, printed in Appendix B hereto, infra, p. B1 is reported at 697 F.2d 860 (9th Cir. 1983).

JURISDICTION

On January 25, 1983, the Court of Appeals filed its opinion in this case (Appendix B, infra, p. B1). On February 8, 1983, petitioner filed its petition for rehearing. On March 7, 1983, the Court of Appeals filed its order denying the petition for rehearing (Appendix C, infra, p. C1). On May 11, 1983, this Court issued its order extending until July 5, 1983, the time within which petitioner must file its petition for writ of certiorari.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1) and 28 U.S.C. § 2101(e).

QUESTIONS PRESENTED

1. In petitioner Board's property tax assessment of respondent's railroad cars, did petitioner comply with section 306 of the Railroad Revitalization and Regulatory Reform Act [1] (4-R Act) by applying a tax rate which was consistent with the average tax rate applied to all other commercial and industrial personal property in California, or must the Board's tax rate be comparable with whatever type of California tax role which contains the majority of California's commercial and industrial property of all types (both real and personal property)?

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1. The Railroad Revitalization and Regulation Reform Act of 1976 is codified at 49 U.S.C. 11503 et. seq.

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STATUTES INVOLVED

Reference is made herein to section 306 of the Railroad Revitalization and Regulatory Reform Act of 1976, 49 U.S.C. 11503 et seq. Pertinent portions of 49 U.S.C. 11503 are set forth in Appendix D, infra, p. D1.

Reference is also made herein to the Jarvis-Gann Initiative, Proposition 13, California Constitution, article XIII A (Appendix E, infra, p. E1); California Constitution, article XIII, section 2 (Appendix F, infra, p. F1); and California Business and Professions Code section 11401 (Appendix G, infra, p. G1).

STATEMENT OF THE CASE

Petitioner State Board of Equalization initially assessed respondents' railroad cars at the rate of 4.85 dollars per hundred dollars of assessed value for the 1978-79 tax year. The tax rate of 4.85 is equivalent to the estimated average rate of general (real and personal) property taxation for the 1978-79 tax year. The use of said tax rate is based on the Board's understanding that such assessment was required in order to comply with the limitations of

Proposition 13 (Cal. Const. art. XIII A), which dramatically reduced the tax rates on real property, and California Constitution, article XIII, section 2, which apparently prohibited the taxation of personal property at a rate greater than that applied to real property. In assessing respondents' railroad cars, it would have been impossible for petitioner to also comply with California Revenue and Taxation Code section 11401, which authorizes petitioner to assess all railroad cars in California at the previous year's average rate of general property taxation, which was 10.68.

Subsequently, on August 14, 1980, the California Supreme Court issued its decision in Board of Supervisors v. Lonergan (1980) 27 Cal.3d 855, holding that Proposition 13 did not apply to property on the unsecured tax roll, which consists primarily of personal property;

and that California Constitution, art. XIII, section 2 did not prevent different tax rates becoming applicable to the secured and unsecured rolls due to the enactment of Proposition 13. In order to comply with the Lonergan case and Cal. Rev. and Tax. Code § 11401, petitioner proceeded to amend its assessment of plaintiff's railroad cars to the tax rate of 10.68, the average rate of general property taxation for the previous year, the 1977-78 tax year. Petitioner's amendment of its assessments of all railroad cars resulted in an additional tax in the amount of $1,278,700.31 for respondent Trailer Train Company, and $275,710.20 for respondent Railbox Company. Respondents, objecting to the collection of those additional taxes, initiated the lawsuit herein. In addition, there are four additional actions which have been

filed on behalf of six other railroad car leasing companies which are pending in the United States Court of Appeals for the Ninth Circuit and awaiting the outcome of this case.[2/]

In its opinion, the Court of Appeals affirmed in part and remanded in part the decision of the District Court. That portion of the case which has been remanded is pending in the District Court.

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2. Pullman Leasing Co. v. State Board of Equalization No. 82-4073
General American Transportation Co. v. State Board of Equalization No. 82-4117
Evans Railcar Leasing Co., et al. v. State Board of Equalization No. 82-4120
ACF Industries, Inc., et al. v. State Board of Equalization No. 82-4121

REASONS FOR GRANTING THE WRIT

1. THERE IS A CONFLICT IN THE APPLICATION OF THE LAW BETWEEN DECISIONS OF THE NINTH CIRCUIT AND FOURTH CIRCUIT COURTS OF APPEALS; THE FOURTH CIRCUIT'S APPROACH SHOULD BE ADOPTED BY THIS COURT.

A. The Ninth Circuit's Decision Herein Is Contrary In A Significant Respect To the Fourth Circuit's Decision In Clinchfield Railroad Company v. Lynch.

In determining whether petitioner had assessed respondents' railroad cars at a discriminatory tax rate in violation of the 4-R Act, the Court of Appeals instructed the District Court to compare the tax rate applied to respondent's railroad cars with the rate applied to either the secured tax roll (primarily real property) or the unsecured tax roll (primarily personal property) depending on which tax roll contained the majority of all commercial

and industrial property in the state in tax year 1978-79.[3/] The Court rejected petitioner's arguments that since the railroad cars involved in the case were personal property, the comparison should be made with the average tax rate applicable to all commercial and industrial personal property in the state. Petitioner argued that personal and real property should be distinguished when comparing tax rates under the 4-R Act, because real property is assessed at a substantially lower value than personal property, and such distinction was intended by Congress in enacting the 4-R Act.

The failure of the Ninth Circuit to recognize the distinction between personal and real property in its

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4. The Court of Appeals uses the language "fiscal year 1978-79" which corresponds with "tax year 1978-79".

instructions to the District Court, places it directly in conflict with the Fourth Circuit's decision in Clinchfield Railroad Company v. Lynch (Fourth Circuit 1983) 700 F.2d 126.

In Clinchfield, the railroad company charged the state of North Carolina with a violation of the 4-R Act for assessing its real and personal railroad property at tax rates in excess of those applied to non-railroad real and personal property. The Fourth Circuit stated that, provided that the breakdown of the railroad's property between personal and real was available, the rate applied to the plaintiff's personal property should be compared with the rate applied to all non-railroad commercial and industrial personal property and the rate applied to plaintiff's real property should be compared with the rate applied to all non-railroad commercial

and industrial real property. However, the court upheld the District Court's decision against the state of North Carolina on the ground that the state had failed to provide to the court the percentage breakdown of plaintiff's property between personal and real, thereby making it impossible for the court to make the rate comparisons of personal with personal and real with real. At footnote 2, the court cites with approval the following comments by the Senate Committee on Commerce in a bill substantially similar to section 306 of the 4-R Act:

> "[The bill] is not intended to interfere with the classification of property by a State for rate purposes into the traditional breakdown of real property, tangible personal property, and intangible property, provided that carrier transporation real property is taxed at no higher rate than other real property, that carrier transportation personal

> property is taxed at no higher rate than other personal property, and that carrier transportation tangibles are taxed at no higher rate than other intangible property." Id., p. 129.

Near the conclusion of its opinion, the court went on to state:

> ". . . . The statute makes clear that personal property, as well as real estate, is to be dealt with in the course of achieving equality and thereby eliminating discrimination . . . . We do not accept the proposition that only proof as to real estate discrepancies was to be obtained, and then applied indiscriminately to both personal property and real property owned or used by the railroads." Id. at p. 133.

The significance of this conflict between the Circuits is illustrated by the plain intent of Congress in an early version of the 4-R Act[4/] that a distinction be made between personal and real property.

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4. Pertinent portions of S.2289 are printed in Appendix H, infra, p. H1.

> "Subparagraph (c) of S.2289 is not intended to abrogate the right of a State to establish separate rates for the different traditional classes of property. That is, the language of subparagraph (c) is not intended to interfere with the classification of property by a State for rate purposes into the traditional breakdown of real property, tangible personal property, and intangible property, provided that carrier transportation real property is taxed at no higher rate than other real property; that carrier transportation personal property is taxed at no higher rate than other personal property; and that carrier transportation intangibles are taxed at no higher rate than other intangible property. (Emphasis ours). Senate Report 91-630, 91st Congress, Re: S.2289, December 20, 1969, p. 11.

The Fourth Circuit's decision in Clinchfield leaves no doubt that in distinguishing between personal and real property, it would have decided the instant case in favor of petitioner. In this case, petitioner provided the District Court the estimated average tax rate for all commercial and industrial

personal property in the state.[5/] This tax rate was estimated to be 10.63, which is very close to the rate of 10.68 applied to respondent's railroad cars.

It seems clear that the Fourth Circuit, consistent with petitioner's approach, would have compared the tax rate applied to respondents' railroad cars, which are personal property, with the average tax rate applied to all commercial and industrial personal property in the state. Had the Ninth Circuit instructed the District Court to apply this comparison, the likely result would be a drastic reduction in respondent's recovery.

B. It Is Necessary That This Conflict Be Resolved At The Earliest Possible Date.

This Petition for Writ of Certiorari should be granted because it

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5. See Declaration of Jeffery L. Reynolds, Appendix I, infra, p. Il.

is necessary that this conflict be resolved as soon as possible. The question concerning which there is a conflict is crucial to the assessment of railroad property generally. Since the states customarily assess railroad property annually, the large amount of money at issue increases each year. The amount at issue in the limited context of pending litigation between petitioner and railroad car leasing companies in California totals $1,252,925. In addition to the four railroad car leasing company cases listed in footnote 2, there are at least nine more cases pending in the Northern District of California involving similar issues of the

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interpretation of the 4-R Act.[6/] The amount of Proposition 13 relief sought by plaintiffs in these nine cases exceeds $10,000,000 a year. If this conflict between the Circuits is not quickly resolved, the resulting

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6. Southern Pac. Trans. Co. v. State of Cal. #C 81-4848 SW
Southern Pac. Trans. Co. v. State of Cal. #C 82-6009 SW
Atchison, Top. & S.F. v. State of Cal. #C 82-6030 SW
Trailer Train v. State BOE, State of Cal. #C 82-6084 SW
Railgon Co. v. State BOE, State of Cal. #C 82-6085 SW
Railbox Co. v. State BOE, State of Cal. #C 82-8086 SW
Pullman Leasing Co. v. BOE, State of Cal. #C 82-6031 SW
Gen. American Trans. Co. v. ACF Ind. #C 82-6600 SW
ACF Ind. Inc. v. State BOE, State of Cal. #C 82-6512 SW

Each of these cases involves a lawsuit by a railroad or private car company under 49 U.S.C. 11503 for a refund of taxes paid for past years and an injunction enjoining the collection of future taxes. The principal issue in each of these cases is the application of Proposition 13 to the respective assessments.

inconsistent application of the 4-R Act will lead to large discrepancies between the states in different Circuits in the taxation of railroad property. As many railroad companies own property in more than one jurisdiction, this conflict could lead to the anomalous result that the property of a railroad company will be assessed under entirely different formulae dictated by the federal courts depending upon the jurisdiction in which their property is located. This result might well encourage railroad companies to relocate their mobile transportation property between jurisdictions in order to take advantage of this inconsistency, a result certainly not intended by the 4-R Act. In fact, this result is directly contrary the tax intent of the 4-R Act to do away with unreasonable burdens on interstate commerce. 49 U.S.C. 11503(b). Moreover, the resulting lack

of uniformity in the taxation of rail transportation property is also contrary to obvious intent of the 4-R Act to bring about uniformity in the taxation of such property.

2. THERE IS A CONFLICT BETWEEN THIS CASE AND WEINBERGER v. ROMERO-BARCELO (April 22, 1983) _____ U.S. _____, 72 L.Ed.2d 91.

The Court of Appeals concluded in its opinion below that the District Court did not err in granting injunctive relief under the 4-R Act without first determining that the standard prerequisites for a preliminary injunction had been met, on grounds that the 4-R Act specifically authorized injunctive relief to prevent a violation of its terms.[7] This is contrary to this Court's holding in the recent case of

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7. 697 F.2d at 869.

Weinberger v. Romero-Barcelo (April 22, 1983) ____ U.S. ____, 72 L.Ed.2d 91.

In Weinberger, in which the plaintiff sought an injunction to enjoin further violations of the Federal Water Pollution Control Act, the First Circuit determined that the District Court erred in undertaking a balancing of the parties' equities and in failing to enjoin further violations of the Act. This Court reversed, holding that even though a federal statute may provide for injunctive relief, the District Court should issue an injunction only after applying the traditional equitable considerations for injunctive relief. Citing language from its decision in Porter v. Warner Holding Co., 328 U.S. 395, 398 (1946), this Court stated:

> "Moreover, the comprehensiveness of this equitable jurisdiction is not to be denied or limited in the absence of a clear and valid legislative command. Unless a statute in so many words, or by a

> necessary and inescapable inference, restricts the court's jurisdiction in equity, the full scope of that jurisdiction is to be recognized and applied. 'The great principles of equity, securing complete justice, should not be yielded to light inferences, or doubtful construction.'" Brown v. Swann, 10 Pet 497, 503 [9 L.Ed. 508] Id., at p. 99.

The court then went on to state:

> "This Court explained in Hecht v. Bowles, 321 US 321, 88 L.Ed. 754, 64 S. Ct. 587 (1944), that a major departure from the long tradition of equity practice should not be lightly implied. As we did there, we construe the statute at issue 'in favor of that interpretation which affords a full opportunity for equity courts to treat enforcement proceedings . . . in accordance with their traditional practices, as conditioned by the necessities of the public interest which Congress has sought to protect.'" 821 US, at 330, 88 L.Ed. 754, 64 S.Ct. 587. Id., at p. 103.

It is clear from the language and legislative history of the 4-R Act that Congress did not intend to remove from the district courts, the power to weigh equitable considerations before issuing injunctive relief for alleged violations thereof. As held in Weinberger, such

an infringement on States' Rights should be explicitly set forth in the statute.

In section 11503, the words "injunction" or "injunctive relief" do not even appear. It is quite apparent that Congress, in providing for federal court jurisdiction and a remedy for violations of the 4-R Act, was only concerned with making this Act an exception to the Anti-injunction Act, 28 U.S.C. section 1341, to give the district courts the power to issue injunctive relief whenever such a remedy is necessary.

The conclusion that Congress did not intend that the 4-R Act displace traditional and equitable criteria in the granting of injunctive relief is inescapable from the following excerpt from the legislative history of the 4-R Act:

> "Enactment of this section will not necessarily mean the Federal Courts will enjoin all state taxation of rail property which are the subject of complaint. The railroads will

> still have the burden of demonstrating that discrimination exists. They will also have to make the additional showing that they are entitled to injunctive relief. With respect to the latter issue, the courts in the exercise of equity jurisdiction will balance the adverse impact on the community of granting such relief against the benefits to the carrier from such relief. The Federal courts will be able to devise remedies that will not be burdensome to the communities involved. (Emphasis added).

House Rep. 94-725, 94th Cong., 1st Sess. (1975).

As pointed out under topic IB above, there are thirteen 4-R Act cases which are pending within the Ninth Circuit. Plaintiffs in several of these cases sought injunctions for alleged violations of the 4-R Act. Moreover, actions to enjoin alleged violations of the 4-R Act are being filed throughout the country. In order to bring about uniformity in the handling of these cases, it is highly important that this Court

clear up this conflict by setting forth the correct standard for the issuance of injunctive relief in 4-R Act cases.

CONCLUSION

For all of the reasons stated herein, a writ of certiorari should issue to review the opinion of the United States Court of Appeals for the Ninth Circuit.

DATED: July 1, 1983

Respectively submitted,

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APPENDIX A

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

TRAILER TRAIN COMPANY, a corporation and RAILBOX COMPANY, a corporation,	)	NO. C-80-4399 SW
Plaintiffs,	)	
v.	)	
STATE BOARD OF EQUALIZATION,	)	
Defendant.	)	

OPINION AND ORDER GRANTING PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION

INTRODUCTION

The court originally issued its order in this case March 10, 1981. That order is hereby amended to clarify the court's opinion.

This action involves a challenge to action taken by defendant State Board of Equalization (the "Board") by which it informed plaintiffs Trailer Train Company (Trailer") and Railbox Company

("Railbox") that the tax rate on their rail cars for 1978 would be more than doubled. Plaintiffs contend defendant violated section 306 of the Railroad Revitalization and Regulatory Reform Act of 1976 (the 4-R Act) by discriminatory property tax treatment of plaintiffs' rail property. Accordingly, plaintiffs sought a preliminary injunction to enjoin the Board from collecting the additional taxes.

This case recently came before the court on plaintiffs' motion for a preliminary injunction. The question presented was whether imposition of the additional tax impermissibly conflicts with federal law prohibiting the taxation of rail transportation property at a rate higher than the rate generally applicable to commercial and industrial property in the same assessment jurisdiction.

After careful consideration of the briefs and arguments of counsel, the pleadings, affidavits and other evidence in the record, the court concluded that this issue must be answered in the affirmative and orally granted the motion. The following constitutes a brief statement of the court's reasons for so ruling, and its written order thereon.

FACTUAL BACKGROUND[1/]

On June 6, 1978, California voters approved Proposition 13 (now Article XIIIA of the California Constitution). Section 1 of Article XIIIA limited the ad valorem tax rate applicable to real property. The Board determined at the time that the Proposition 13 tax rate limitation must be applied not only to real property but to personal property as well on the basis of California Constitution Article XIII, Section 2

which requires that personal property not be taxed at a rate higher than real property in the same taxing jurisdiction. The Proposition 13 tax rate limitation took effect for the tax year beginning July 1, 1978.

On July 31, 1978, acting pursuant to the provisions of the Private Railroad Car Tax Law[2/] and Proposition 13, the Board valued all railroad cars owned or used by plaintiffs. Trailer and Railbox as of the lien date, March 1, 1978. The Board determined the full cash value of Trailer Train cars and Railbox cars to be $87,732,440 and $18,916,652 respectively. The Board determined the assessed value of Trailer Train cars and Railbox cars to be $29,933,110 and $4,729,163 respectively. Plaintiffs' railroad cars were initially given the benefit of the tax rate limitation for the 1978-79 tax year. Thus a tax rate of $4.85 per hundred

dollars of assessed value was levied on the 1978-79 assessed values of plaintiffs' property.

This situation remained unchanged until the California Supreme Court ruled in August 1980 in Board of Supervisors of San Diego v. Lonergan, 27 Cal.3d 855 (1980) that property on the 1978-79 unsecured tax roll is to be taxed at the 1977-78 secured rate rather than at the new Proposition 13 rates. The California court reasoned that taxes on the unsecured roll for 1978 were due and payable March 1, 1978, which was prior to the voter approval of the Proposition in June 1978, and therefore could not have been in the contemplation of the minds of the voters.

More importantly, the Longergan court explained that article XIII, section 12 of the California Constitution provided that taxes levied on property

not secured by real estate were based on the tax rate applied to secured property in the preceding tax year. The court held that Proposition 13 did not impliedly repeal section 12, and therefore the unsecured roll's rate has already been set for 1978-79 and could not be reduced by referring to the lower rates established by the newly passed proposition.

Since private railroad cars are by statute taxed at the prior year's average rate of general property taxation in the State, the Board concluded that Lonergan required that the 1977-78 average rate of general property taxation be applied to plaintiffs' property for the 1978-79 tax year rather than the tax rate as limited by Proposition 13. Thus, in September, 1980, the Board imposed a tax on the 1978-79 assessments of plaintiffs' property at the rate of 10.68 dollars per hundred dollars of assessed value, less

the amount of the tax previously paid at the rate of 4.85 dollars per hundred dollars of assessed value. This resulted in a tax increase of $1,278,700.31 on Trailer Train property and $275,210.20 on Railbox property for the 1978-79 tax year.

LEGAL STANDARDS

Plaintiffs in this action for injunctive relief contend defendants have violated section 306 of the Railroad Revitalization and Regulatory Reform Act of 1976 (the 4-R Act[3/]), by discriminatory property tax treatments of plaintiffs' rail transportation property. Section 306(1) (c) provides that a state may not levy or collect "any ad valorem property tax on transportation property at a tax rate higher than the tax rate generally applicable to commercial and industrial property in the same assessment jurisdiction."

Section 306(s)(e) further provides that "in the event that the ratio of the assessed value of all other commercial and industrial property in the assessment jurisdiction to the true market value [of such property] cannot be established . . ." the court shall hold unlawful "the collection of any ad valorem property tax on such transportation property at a tax rate higher than the tax rate generally applicable to taxable property in the taxing district."

Finally, section 306(2) expressly authorizes federal district courts "to grant such mandatory or prohibitive injunctive relief, interim equitable relief, and declaratory judgments as may be necessary to prevent, restrain, or terminate any acts in violation of this section."

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ANALYSIS

The facts in this case make it fairly obvious that the Board taxed the plaintiffs' rail transporation property at a rate that is higher than that generally applicable to taxable property in the taxing district. By its October 10, 1980 letter, the Board attempted to levy a tax on plaintiff's property at the rate of 10.68 dollars per hundred dollars of assessed value while it appears that the general property tax rate for the 1978-79 tax year was 4.70 per hundred dollars of assessed value. Therefore, if section 306 applies to this case, the California property tax on rail transportation property is in conflict with the mandates of this federal statute.

The Board first argues that section 306 does not apply to this case because the statute expressly limits itself to

discrimination exceeding five percent. Section 306(2)(c) provides:

> "(c) no relief may be granted under this section unless the ratio of assessed value to true market value, with respect to transportation property, exceeds by at least 5 per centum the ratio of assessed value to true market value, with respect to all other commercial and industrial property in the same assessment jurisdiction."

The Board argues that the 4-R Act's five percent jurisdictional requirement has not been met. This court disagrees. It is clear that Congress only intended the five percent limitation to be a threshhold requirement in assessment ratio discrimination cases.[4/] To require a showing of a five percent discriminatory ratio in a tax rate case, however, would frustrate the purpose of section 306. The minimum percentage rate was included in section 306 because Congress was not concerned with insignificant variations that might develop in state assessment

practices.[5/] Plainly, differences of much less than five percent in rate cases could still result in substantial discrimination against a particular classification of property.

The instant case is illustrative of the fact that a disparity in comparable tax rates can present more than an insignificant variation. To establish the degree of disparity in this case, it first must be determined the rates which are being compared. Defendant would have the court compare the rate applied to plaintiffs' rail transportation property with the rate applicable to all other personal property in the state. However, it is entirely inappropriate to compare plaintiffs' property with a hypothetical tax rate on personal property. First, tax rates were set only for the secured and unsecured rolls, each of which contains both personal

and real property.[6] Second, plaintiffs' property is not taxed on either the secured or unsecured rolls, but rather is assessed and taxed by the State Board of Equalization.

Section 306(2)(e) of the 4-R Act provides that when the comparable assessment ratio for industrial and commercial property is not available[7], the tax rate on the subject property must be compared with the tax rate generally applicable to taxable property in the taxing district.[8] In the present case, therefore, the tax rate on plaintiffs' property must be compared with the average tax rate for all property in the state.

The average rate for general property taxation for the 1978-79 tax year was 4.70 dollars perhundreddollars of assessed value. This rate, as previously mentioned, is substantially lower than

that applied to plaintiffs' rail transporation property. The result is a discriminatory tax rate for transportation property which must be enjoined.

The Board also contends that the 4-R Act does not apply to the tax assessment herein becaue it was allegedly assessed prior to the effective date of the act. Section 306(2)(b) states that "the provisions of this section shall not become effective until 3 years after the date of enactment of this section." The 4-R Act was passed on February 5, 1976 and thereby became effective on February 5, 1979.

The Board argues that its actions October 10, 1980 action was not assessing a new tax, but rather merely was "amending" a pre-1979 assessment. While defendant's argument is creative, it cannot be adopted in this case for several reasons.

First, and most significant, section 306's reach extends not only to the assessment of discriminatory taxes but to their collection as well. Assuming arguendo, defendant's "amendment" theory was accepted, it is entirely clear that the defendant still sought to collect this discriminatory tax well after the effective date of the federal statute.

Second, defendant's theory that it "amended" the prior assessment and did not levy a new tax against plaintiff's property defies common sense and ignores the legislative purpose of the delayed effective date of the act.

An examination of the legislative history of section 306 reveals that the Congressional purpose of delaying the effective date of the state for a period of three years was to afford states the time to eliminate any disparities that existed in their taxing system with

respect to transportation property.[9] It is incongrous that a state tax decision in 1980 to levy and collect additional taxes theretofore uncollected could not be held to violate a federal statute passed in 1976 which delayed its effective date only to permit time for corrective state measures. Clearly, the October 10, 1980 letter represents a new tax decision which violated the federal statute at that time.

Finally, as a matter of federal supremacy,[10] the power of the state to discriminate against rail transportion property for purposes of applying tax rates was preempted by the passage of the 4-R Act in 1976.

In passing section 306, Congress evidenced its intent to regulate the area of discriminatory taxation of transportation property. It is well established that when Congress acts in

such a way as to manifest its purpose to exercise its constitutional authority, the regulatory power of the state ceases to exist.[11]/

For example, in Erie Railroad v. New York, 233 U.S. 671, 681 (1913), the Court applied the preemption doctrine and struck down state legislation attempting to regulate the hours of service of railroad telegraph operators engaged in interstate commerce. The Court held that Congress had earlier acted in such a way as to manifest its purpose to exercise its constitutional authority over this activity, and therefore the regulatory power of the states was preempted. Id., at 681. As in the present case, the Erie Railroad Court held that the preemption doctrine applied from the time of the passage of the act notwithstanding the fact that its effective date was still in the future.

In the present case, the federal statute occupies the field regulating taxation of transportation property. The state cannot overturn this strong Congressional policy by the passage of Proposition 13 or its subsequent interpretation in Lorergan. Therefore, the federal statute requires the defendant to reduce the assessment ratio for railroad property to that generally applied to other property during the same tax year.

Section 306, by its own terms, authorizes a federal court to issue injunctions to prevent the enforcement of taxes which discriminate against rail transportation property. In this case, the injunction must issue as it is clear that a federal statute has been violated. Moreover, the plaintiffs have demonstrated a likelihood of success on the merits and irreparable harm.

It is now fairly well-established that when an injunction is sought to prevent the violation of a federal statute which specifically provides for injunctive relief, the normal requirements for equitable relief need not be satisfied.[12/] However, while this court need not inquire into the traditional grounds for equitable relief in a section 306 case,[13/] there exist other strong arguments why this injunction should issue.

As previously mentioned, the plaintiffs have an extremely strong argument on the merits. It additionally appears that the plaintiffs would suffer irreparable harm if the injunction is not granted. Pursuant to plaintiffs' request, this court is willing to take judicial notice of the fact that the prime interest rate far exceeds the twelve percent interest which would be paid by the state if plaintiffs were able

to obtain a refund. While defendant is correct that injunctions are usually inappropriate in cases where the loss may be measured by money damages,[14] a monetary award in this case would be inherently inadequate because the defendant would not be required to fully respond in damages in the event plaintiffs are successful on the merits.[15]

In light of the fact that the State of California could not have anticipated this tax revenue nor have utilized the windfall in planning its budget, it is difficult to perceive any significant hardships for the defendant if the injunction is granted. Moreover, the strong federal interest in eliminating discriminatory state taxation of transportation property evidenced by the passage of the 4-R Act further compels this court's conclusion.

CONCLUSION

The plaintiffs have demonstrated to the satisfaction of this court that it should exercise its remedial powers granted under section 306 by enjoining the taxation of rail transportation property at a rate higher than that generally applicable to other taxable property in the taxing district. Such a remedy is necessary to effectuate the Congressional policy under the 4-R Act.

Accordingly, IT IS HEREBY ORDERED that plaintiffs' Motion for a Preliminary Injunction is granted.

IT IS FURTHER ORDERED that plaintiffs' remaining monetary and pendent claims for relief are dismissed without prejudice.

DATED: March 30, 1981.

SPENCER WILLIAMS
United States District Judge

FOOTNOTES

1 Many of the facts set forth in this section of the opinion are taken from the document entitled "Stipulation of Facts" submitted to the court prior to the hearing on the motion for preliminary injunction.

2 Cal. Rev. & Tax Code, §§ 11201 et seq.

3 49 U.S.C. § 11503.

4 The assessment ratio of 25 percent is the same, of course, for all property on either the secured or unsecured roll and all parties concede that no discrimination exists with respect to this ratio.

5 Louisville & Nashville Railroad v. Louisiana State Tax Commission, 498 F.Supp. 418 (M.D. La. 1980).

6 The facts reveal that the unsecured roll contains only 67 percent personal property while the secured roll is comprised of almost 40 percent personal property.

7 Beginning in the 1978-79 tax year, the Board ceased to publish the ratios of assessed value to true market value for California counties, becaue with the adoption of Proposition 13, assessments in California are no longer based upon true market value.

8 To restrict comparison solely to the rate for the unsecured roll would violate this requirement

because it appears that this roll is applicable to only nine percent of all taxable property in the state. Additionally, if plaintiffs' property were taxed locally it would be entered on the secured roll.

9 See State of Tennessee v. Louisville & Nashville Railroad Co., 478 F.Supp. 199 209 (M.D. Tenn. 1979).

10 See U.S. CONST., Art. VI, cl. 2.

11 Ray v. Atlantic Richfield Co., 435 U.S. 151, 151 157 (1978).

12 United States v. City and County of San Francisco, 310 U.S. 16, 30-31 (1940). Lathan v. Volpe, 455 F.2d 1111, 1116-17 (9th Cir. 1971) Sierra Club v. Coleman, 405 F.Supp. 53, 54 (D.D.C. 1975).

13 Tennessee v. Louisville & Nashville Railroad Co. 478 F.Supp. 199, 210 (M.D. Tenn. 1979).

14 See, e.g., A.L.K. Corporation v. Columbia Pictures Industries, Inc., 440 F.2d 761 (2d Cir. 1971).

15 See Teamsters Freight Local v. Southern Forwarding Co., 424 F.Supp. 11, 13 n. 13 (M.S. Tenn. 1976).

APPENDIX B

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

TRAILER TRAIN COMPANY, a corporation and RAILBOX COMPANY, a corporation,	)	NO. 81-4188
	)	DC NO. C-80-4399 SW
Plaintiffs-Appellees,	)	
v.	)	OPINION
STATE BOARD OF EQUALIZATION,	)	
Defendant-Appellant.	)	

Appeal from the United States District Court for the Northern District of California
Spencer Williams, District Judge, Presiding Argued and Submitted March 10, 1982

CHOY, Circuit Judge:

Before: HAYNSWORTH,* and CHOY, Circuit Judges, and JAMESON,** District Judge.

*The Honorable Clement Haynsworth, Senior United States Circuit Judge for the Fourth Circuit, sitting by designation.

**The Honorable William J. Jameson, Senior United States District Judge for the District of Montana, sitting by designation.

The issue in this case is whether the district court erred in granting a preliminary injunction preventing the California State Board of Equalization (Board) from collecting an amended property-tax bill levied on appellees' railroad cars. The district court found that the imposition of the additional tax impermissibly conflicted with § 306 of the Railroad Revitalization and Regulatory Reform Act of 1976 (the 4-R Act), current version at 49 U.S.C. § 11503[1], which prohibits the taxation of rail-transportation property at a rate higher than the rate generally applicable to commercial and industrial property in the same assessment jurisdiction. We concur in the district court's underlying conclusions that § 11503 applies to the Board's attempt to collect the additional tax, that § 11503 authorizes a district court to enjoin tax-rate discrimination,

and that, under the circumstances of this the traditional prerequisites for preliminary injunction need not be satisfied. We find, however, that the district court's method of selecting the tax rate generally applicable to commercial and industrial property, which is the necessary first step in determining the existence of tax-rate discrimination, was defective. We therefore affirm in part, and vacate and remand in part.

I. Facts[2/]

California classifies and taxes the bulk of its property as "secured" or "unsecured."[3/] The secured and unsecured tax rolls each contain both real and personal property. The secured tax rate is calculated anew each fiscal year, while the unsecured tax rate is equal to the tax rate applied to secured property in the preceding fiscal year.

Cal. Const. art. XIII, § 12; Cal. Rev. & Tax Code § 2905 (West 1970 & Supp. 1982).

Private railroad cars are considered personal property and are subject to a separate tax under California's Private Railroad Car Tax Law, Cal. Rev. & Tax Code § 11401 (West 1970 & Supp. 1982). The tax rate for private railroad cars is the average rate of general property taxation for the preceeding year, id., which is basically the weighted average of the prior year's secured and unsecured tax rates.

In June 1978, California voters approved Proposition 13, Cal. Const. art. XIIIA, which limits the tax rate applicable to real property. Relying on Article XIII, section 2, of the California Constitution, which requires that personal property not be taxed at a rate higher than that applied to real property in the same jurisdiciton, the

Board at that time determined that the Proposition 13 tax-rate limitation must also be applied to limit the tax on private railroad cars. Accordingly, it levied a tax on railroad cars owned by the Trailer Train Company and the Railbox Company (the Companies) for fiscal year 1978-79 at the lower Proposition 13 rate, estimated at $4.85 per hundred dollars of assessed value, instead of the usual rate prescribed by the Private Railroad Car Tax Law. This latter tax rate, calculated by taking the weighted average of the secured and unsecured rates for fiscal year 1977-78, would have amounted to $10.68 per hundred dollars of assessed value.

The situation remained unchanged until August 1980, when the California Supreme Court ruled that the Proposition 13 tax-rate limitation did not apply to real or personal property on the 1978-79

unsecured roll. Board of Supervisors v. Lonergan, 27 Cal.3d 855, 616 P.2d 802, 167 Cal. Rptr. 820 (1980), cert. denied, 450 U.S. 918 (1981). The Board interpreted Lonergan as rendering improper its application of the Proposition 13 tax-rate limitation to private railroad car for fiscal year 1978-79.[4/] Therefore, in October 1980, the Board recalculated the tax on private railroad cars for 1978-79, this time using the rate of $10.68 per hundred dollars of assessed value -- the rate the Board would have initially applied had it not believed Proposition 13 to be controlling. The Board levied and attempted to collect from the Companies an additional tax equal to the difference between the tax computed at the $10.68 rate and the tax previously paid at the $4.85 rate.

The Companies sued to enjoin the Board from collecting this additional tax

on the ground that the additional tax discriminated against owners of rail-transportation property in violation of 49 U.S.C. § 11503. The district court granted the Companies' motion for preliminary injunction, and the Board filed this appeal.

On appeal, the Board argues that the district court erred in granting the preliminary injunction because (1) the alleged discriminatory tax was imposed before the effective date of § 11503; (2) § 11503 does not authorize a district court to enjoin tax-rate discrimination; (3) there was no tax-rate discrimination; and (4) the necessary preconditions for the grant of preliminary injunction have not been met.

II. Discussion

A. Application of § 11503

The 4-R Act was passed in 1976, but the effective date of § 11503 was

postponed for three years to February 1979. Pub. L. No. 94-210, § 2(b), 90 Stat. 31, 54 (1976). The assessment of the Companies' property on which the additional tax is based was made in 1978, several months before the effective date of § 11503. The Board, however, tried to collect this additional tax in 1980, after the effective date of § 11503. Since § 11503(b) prohibits not only assessments which discriminate against rail-transportation property, but also the collection of taxes based on discriminatory tax rates, § 11503 appears clearly to apply to the Board's collection of the additional tax.

The Board puts forth a creative argument in an attempt to avoid the application of § 11503. It argues that since the additional tax is based on assessments made in 1978 and is intended merely to correct its mistaken

calculation of taxes owed for that year, the additional tax should relate back to 1978 and thus be deemed to have been imposed before the effective date of § 11503.

The Board's relation-back argument is not persuasive. Congress' purpose in postponing the effective date of § 11503 was to afford the states sufficient time to comply with the statute's prohibition against discriminatory tax treatment of railroad property. See State of Tennessee v. Louisville & Nashville Railroad Co., 478 F. Supp. 199, 209 (M.D. Tenn. 1979), aff'd, 652 F.2d 59 (6th Cir.), cert. denied, 102 S. Ct. 135 (1981). It was not to provide states with an additional opportunity to impose and collect discriminatory taxes. Allowing the additional tax to relate back to 1978 and thus escape the application of § 11503 not only would subvert

Congress' purpose in postpoing the statute's effective date, but also would run counter to the basic policy of § 11503 to prohibit discriminatory taxation of railraod property.[5/]

B. Power to Enjoin Tax-Rate Discrimination

Whether a district court has jurisdiction under § 11503 to enjoin the use of a discriminatory tax-rate presents a sticky exercise in statutory interpretation. Subsection (b) of § 11503 prohibits, among other things, the discriminatory assessment of rail-transportation property and the levy or collection of a tax based on discriminatory tax rates. The first sentence of subsection (c) then grants the district court jurisdiction to prevent a violation of subsection (b). But the second sentence of subsection (c) provides that "[r]elief may be granted under this subsection only if the ratio

of assessed value to true market value of rail transportation property exceeds by at least 5 percent, the ratio of assessed value to true market value of other commercial and industrial property in the same assessment jurisdiction." (Emphasis added.) Under a narrow, literal reading of § 11503, it would appear that, while tax-rate discrimination constitutes a violation of the statute, injunctive relief can only be granted if the tax-rate discrimination is accompanied by an assessment-ratio discrimination of at least 5 percent.

A statute, however, should not be interpreted so narrowly as to defeat its obvious intent. In interpreting a statute, the court's objective should be to ascertain congressional intent and give effect to legislative will. Philbrook v. Glodgett, 421 U.S. 707, 713-14 (1974); United States v. American

Trucking Association, Inc., 310 U.S. 534, 542 (1940).

The purpose of § 11503 is "to eliminate the long-standing burden on interstate commerce resulting from discriminatory State and local taxation of common and contract carrier transportation property."[6/] Congress recognized that discrimination against rail transportation property can result from either assessment variation or tax-rate variation. S. Rep. No. 1085, 92d Cong., 2d Sess. 5 (1972); S. Rep. No. 630, 91st Cong., 1st Sess. 3 (1969). It thus drafted § 11503 to prohibit the discriminatory use of either of these methods. Congress also believed that a federal court remedy for carriers subject to discriminatory taxation was necessary because state courts were not providing them with a plain, speedy, and efficient remedy. S. Rep. No. 1085, 92d Cong., 2d

Sess. 4-5 (1972); S. Rep. No. 630, 91st Cong., 1st Sess. 6-7 (1969). It thus included in § 11503 a procedural component which authorizes victims of discrimination to seek injunctive relief in federal court.

Given the basic concern motivating Congress' enactment of § 11503, Congress could not have intended that the statute be construed as authorizing the district court to enjoin a tax-rate discrimination only when it is accompanied by an assessment-ratio discrimination. Such a literal reading of § 11503 ignores Congress' recognition that discriminatory taxation of carriers can result from either assessment-ratio or tax-rate discrimination. It also undermines Congress' intent to provide discrimination victims with an injunctive federal-court remedy by placing arbitrary limits

on those who could apply for such relief.

The literal reading of § 11503 leads to the absurd result that a district court could enjoin the use of an assessment-ratio excessive by 6 percent, but would be powerless to enjoin the use of tax-rate excessive by 80 percent unless it were also accompanied by the use of an excessive assessment ratio. A court may look beyond the express language of a statute where a literal interpretation thwarts the purpose of the overall statutory scheme or leads to an absurd result. Cantwell v. County of San Mateo, 631 F.2d 631, 634 (9th Cir. 1980), cert. denied, 101 S. Ct. 1703 (1981); International Telephone and Telegraph Corp. v. General Telephone and Electronics Corp., 518 F.2d 913, 917-18 (9th Cir. 1975); see United States v. American Trucking Associations, Inc., 310 U.S. at 543-44. In view of Congress' clear purpose in

enacting § 11503, we hold that the statute is properly construed as granting the district court jurisdiction to enjoin a tax-rate discrimination independent of any assessment-ratio discrimination.7/

C. Existence of Tax-rate Discrimination

Section 11503(b)(3) prohibits the taxation of rail transporation property at a tax rate higher than the tax rate generally applicable to commercial and industrial property in the same assessment jurisdiction.8/ To discern whether California has imposed a discriminatory tax rate in violation of § 11503(b)(3), it is necessary to compare the tax rate applied to the Companies' railroad cars with that generally applicable to commercial and industrial property. Our task is complicated by the fact that, while the rate applied to the Companies' railroad cars is readily available

($10.68 per $100.00 of assessed value), California has no specific tax rate for commercial and industrial property. Instead, California classifies and taxes its property as "secured" or "unsecured" with commercial and industrial property appearing on both the secured and unsecured rolls.[9/] The secured rate for the year in issue, the 1978-79 fiscal year, was $4.70 per $100.00 of assessed value. The unsecured rate for that year, under the Lonergan decision, should have been set at $10.63 per $100.00 of assessed value.[10/]

Neither § 11503 nor its legislative history provides much guidance as to what should be done when a specific rate generally applicable to commercial and industrial property is not readily apparent. We find, however, that for this case the following approach best conforms to the statute's language and

fulfills its intent: The 1978-79 secured and unsecured rolls must be examined to determine which roll contained the majority of California's commerical and industrial property. The tax rate applicable to the roll that contained the majority of the commercial and industrial property shall be deemed the rate generally applicable to commercial and industrial property and serve as the base rate for comparison against the Companies' $10.68 rate.[11/] If the determination of which roll contained the majority of the state's commercial and industrial property in the 1978-79 fiscal year is not possible, the average tax rate for all property shall be used as the basis for comparison.

In selecting the base rate for comparison against the Companies' rate, the district court failed to focus on the crucial issue of which tax roll

contained the majority of the state's commercial and industrial property. Instead, the court apparently assumed that since California has no specific rate for commercial and industrial property, the rate generally applicable to commercial and industrial property could not * be determined.[12/] It then interpreted the latter portion of § 11503(c) as requiring the use of the average tax rate for all property as the basis for comparison in this assumed situation.[13/]

Under our reading of § 11503, the fact that California has no specific rate for commercial and industrial property does not mean that a rate generally applicable to such property cannot be determined. The absence of a specific rate merely requires that the inquiry be shifted to which roll, the secured or unsecured, contained the majority of the

state's commerical and industrial property in the 1978-79 fiscal year.

Because the district court misinterpreted § 11503, it failed to make this crucial inquiry. Its method of selecting the base rate for comparison against the Companies' rate was thus materially flawed and its consequent finding of discrimination cannot be accepted. Unfortunately, the record does not contain sufficient evidence for us independently to determine which roll contained the majority of the state's commercial and industrial property. The case must therefore be remanded for that determination. On remand, we instruct the district court to adopt the approach we have set forth in this opinion in selecting the proper base rate for comparison.[14/] Such a selection is, of course, a necessary step in determining whether California has imposed

a discriminatory tax rate on the Companies' railroad cars.

D. Preconditions for Preliminary Injunction

Finally, the Board argues that the district court erred in granting the preliminary injunction without first requiring the establishmnnt of the standard equitable prerequisites for such relief.[15/] We disagree.

The standard requirements for equitable relief need not be satisfied when an injunction is sought to prevent the violation of a federal statute which specifically provides for injunctive relief. Atchison, Topeka and Santa Fe Railway v. Lennen, 640 F.2d 255, 259-61 (10th Cir. 1981); see, United States v. City and County of San Francisco, 310 U.S. 16, 30-31 (1940). Section 11503 clearly falls within this exception because its subsection (c) specifically authorizes a

district court to grant injunctive relief to prevent a violation of the statute.[16/] See Atchison, Topeka and Santa Fe Railway v. Lennen, 640 F.2d 255 (expressly applying exception to § 11503). The Board provides no convincing reason why this exception should not apply in the present case.

III. Conclusion

We are in basic agreement with the district court with respect to the following findings: (1) Section 11503 is fully applicable to the Board's attempt to collect the additional tax levied against the Companies' railroad cars; (2) the statute authorizes the district court to enjoin tax-rate discrimination independent of any assessment-ratio discrimination; and (3) traditional prerequisites for equitable relief need not be satisfied before a preliminary injunction may be issued

under § 11503.

However, because we also find that the district court erred in selecting the tax rate generally applicable to commercial and industrial property, we cannot affirm its determination that the Board imposed a discriminatory tax rate on the Companies' railroad cars. Section 11503 requies that the rate generally applicable to commercial and industrial property be used as the base tax rate for comparison against the Companies' rate for purposes of determing discrimination. On remand we instruct the district court to ascertain which tax roll, the secured or unsecured, contained the majority of California's commerical and industrial property in fiscal year 1978-79. The tax rate applicable to the selected roll shall be the rate generally applicable to commercial and industrial property and

shall be used as the base rate for comparison against the Companies' rate. If it is impossible to determine which roll contained the majority of the state's commercial and industrial property, the average tax rate for all property shall be used as the basis for comparison.

AFFIRMED in part; VACATED and REMANDED in part.

APPENDIX C

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

TRAILER TRAIN COMPANY, a corporation and RAILBOX COMPANY, a corporation,	)	NO. 81-4188
	)	No. District of California
Plaintiffs-Appellees,	)	
v.	)	ORDER
STATE BOARD OF EQUALIZATION,	)	
Defendant-Appellant.	)	

Before: HAYNSWORTH,* and CHOY, Circuit Judges and JAMESON,** District Judge.

The panel as constituted in the above case has voted to deny the petition for rehearing. The petition for rehearing is denied.

*The Honorable Clement Haynsworth, Senior United States Circuit Judge for the Fourth Circuit, sitting by designation.

**The Honorable William J. Jameson, Senior United States District Judge for the District of Montana, sitting by designation.

APPENDIX D

§ 11503. Tax discrimination against rail transportation property

(a) In this section --

(1) "assessment" means valuation for a property tax levied by a taxing district.

(2) "assessment jurisdiction" means a georgraphical area in a State used in determining the assessed value of property for ad valorem taxation.

(3) "rail transportation property" means property, as defined by the Interstate Commerce Commission, owned or used by a rail carrier providing transportation subject to the jurisdiction of the Commission under subchapter I of chpater 105 of this title.

(4) "commercial and industrial property" means property, other than transportation property and land used primarily for agricultural purposes or timber growing, devoted to a commercial or industrial use and subject to a property tax levy.

(b) The following acts unreasonably burden and discriminate against interstate commerce, and a State, subdivision of a State, or authority acting for a State or subdivision of a State may not do any of them:

(1) assess rail transportation property at a value that has a higher ratio to the true

market value of the rail transportation property than the ratio that the assessed value of other commercial and industrial property in the same assessment jurisdiction has to the true market value of the other commercial and industrial property.

(2) levy or collect a tax on an assessment that may not be made under clause (1) of this subsection.

(3) levy or collect an ad valorem property tax on rail transportation property at a tax rate that exceeds that tax rate applicable to commercial and industrial property in the same assessment jurisdiction.

(4) impose another tax that discriminates against a rail carrier providing transportation subject to the jurisdiction of the Commission under subchapter I of chpater 105 of this title.

(c) Notwithstanding section 1341 of title 28 and without regard to the amount in controversy or citizenship of the parties, a district court of the United States has jurisdiction, concurrent with other jurisdiction of courts of the United States and the States, to prevent a violation of subsection (b) of this section. Relief may be granted under this subsection only if the ratio of assessed value to true market value of rail transportation property exceeds by at least 5 percent, the ratio of assessed

value to true market value of other commercial and industrial property in the same assessment jurisdiction. The burden of proof in determining assessed value and true market value is governed by State law. If the ratio of the assessed value of other commercial and industrial property in the assessment jurisdiction to the true market value of all other commercial and industrial property cannot be determined to the satisfaction of the district court through the random-sampling method known as a sales assessment ratio study (to be carried out under statistical principles applicable to such a study), the court shall find, as a violation of this section--

(1) an assessment of the rail transportation property at a value that has a higher ration to the true market value of the rail transportation property than the assessed value of all other property subject to a property tax levy in the assessment jurisdiction has to the true market value of all other commercial and industrial property; and

(2) the collection of an ad valorem property tax on the rail transportation property at a tax rate that exceeds the tax ration rate applicable to taxable property in the taxing district.

Pub.L. 95-473, Oct. 17, 1978, 92 Stat. 1445.

APPENDIX E

ARTICEL XIIIA. TAX LIMITATION [NEW]

§ 1. Ad valorem tax on real property; maximum amount--

"Section 1. (a) The maximum amount of any ad valorem tax on real property shall not exceed one percent (1%) of the full cash value of such property. The one percent (1%) tax to be collected by the counties and apportioned according to law is the district within the counties.

(b) The limitation provided for in subdivision (a) shall not apply to ad valorem taxes or special assessments to pay the interest and redemption charges on and indebtedness approved by the voters prior to the time this section becomes effective. (Added June 6, 1978.)

§ 2. Full cash value; full cash value base; exclusive of any active solar energy system--

Sec. 2. (a) The full cash value means the county assessor's valuation of real property as shown on the 1975-76 tax bill under "full cash value" or, thereafter, the appraised value of real property when purchased, newly constructed, or a change in ownership has occurred after the 1975 assessment. All real property not already assessed up to the 1975-76 full cash value may be reassessed to reflect that valuation. For purposes of this section, the term "newly constructed" shall not include real property which is reconstructed after a disaster, as declared by the Governor, where the fair market value of such real property, as reconstructed, is comparable to its fair market value prior to the disaster."

APPENDIX F

Art. 13, § 2. Taxation of personal property; Classification; limitation--

"Sec. 2. The Legislature may provide for property taxation of all forms of tangible personal property, shares of capital stock, evidences of indebtedness, and any legal or equitable interest therein not exempt under any other provision of this article. The Legislature, two-thirds of the membership of each house concurring, may classify such personal property for differential taxation or for exemption. The tax on any interest in notes, debentures, shares of capital stock, bonds, solvent credits, deeds of trust, or mortgages shall not exceed four-tenths of one percent of full value, and the tax per dollar of full value shall not be higher on personal property than on real property in the same taxing jurisdiction." (Added Nov. 5, 1974.)

APPENDIX G

Revenue and Taxation Code § 11401. Levy and entry of tax--

"On or before October 1, the board shall levy upon private railroad cars assessed under this part, for each year, a tax computed at the next preceding year's average rate of general property taxation in the state and shall enter the tax upon a record maintained by the board for that purpose."

APPENDIX H

91st CONGRESS
1st Session

S. 2289
[Report No. 91-630]

IN THE SENATE OF THE UNITED STATES

May 29, 1969

Mr. Magnuson (for himself, Mr. Hart, Mr. Hartke, Mr. Inoute, Mr. Moss and Mr. Prouty) introduced the following bill; which was read twice and referred to the Committee on Commerce

December 20, 1969

Reported by Mr. Magnuson, with amendments

A BILL

To amend the Interstate Commerce Act, as amended, in order to make unlawful, as unreasonable and unjust discrimination against and an undue burden upon interstate commerce, certain property tax assessments of common and contract carrier property, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled. That the Interstate Commerce Act, as amended, is amended by inserting after section 25 thereof a new section 25a as follows:

"SEC. 25a (1) Notwithstanding the provisions of section 202(b), the following action by any State, or subdivision or agency thereof, whether such action be taken pursuant to a constitutional provision, statute, or administrative order or practice, or otherwise, is hereby declared to constitute an unreasonable and unjust discrimination against and an undue burden upon interstate commerce and is hereby forbidden and declaredeto be unlawful: (a) the assessment (but only to the extent of any portion based on excessive values as hereinafter described), for purposes of a

property tax levied by any taxing district of transportation property owned or used by any common or contract carrier subject to economic regulation pursuant to the provisions of the Interstate Commnrce Act at a value which bears a higher ratio to the true market value of such transportation property than the assessed value of all other property in the assessment jurisdiction in which is included such taxing district and subject to a property tax levy bears to the true market value of all such other property; (b) the collection of any tax on the portion of said assessment so declared to be unlawful; or (c) the collection of any ad valorem property tax on such transportation property at a tax rate higher than tax rates applicable to any other property in the taxing district.

"(2) As used in this section:

"(a) The term 'transportation property' means transportation property as defined in the regulations of the Interstate Commerce Commission.

"(b) The term 'assessment jurisdiction' means a geographical area, such as a State or a county, city or township within a State, which is a unit for purposes of determining assessed value of property for ad valorem taxation.

"(3) Notwithstanding the provisions of section 1341, title 28, United States Code, or of the constitution or laws of an State, the district courts of the United States shall have jurisdiction, upon complaint and after hearing, to issue such writs of injunction or other proper process, mandatory or otherwise, as may be necessary to restrain any

State, or subdivision or agency thereof, or any person from doing anything or performing any act declared by paragraph (1) hereof to be unlawful: Provided, however, that such jurisdiction shall not be exclusive of that which any Federal or State court may otherwise have: And provided further, that the provisions of this paragraph shall not become effective until three years after the date of enactment: And provided further, That no relief shall be granted hereunder unless the assessment percentage applied to carrier transportation property exceeds by at least 5 per centum the assessment percentage applied to all other preoprty in the assessment jurisdiction."

APPENDIX I

GEORGE DEUKMEJIAN, Attorney General
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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

TRAILER TRAIN COMPANY, a corporation,	CIVIL ACTION NO. C 80 4399 SW
Plaintiffs,	DECLARATION OF JEFFREY L. REYNOLDS
v.	
STATE BOARD OF EQUALIZATION,	
Defendant.	

I, Jeffrey L. Reynolds, certify and declare as follows:

1. I am presently Chief of the Statistical Research and Consulting Division of the State Board of

Equalization. I have held this position for eighteen months and have been employed by the Board in the division for the past fourteen years. I was personally responsible for the preparation of Table A on page 22 of the Annual Report 1978-79 of the California State Board of Equalization which has been filed as Exhibit C to Plaintiff's Verified Complaint. The facts set forth herein are personally known to me, and I have first-hand knowledge of the same. If called as a witness, I could and would competently testify thereto under oath.

2. The figure 4.79 that appears on the "1978-79" line and under the "Nominal" column of Table A, Exhibit C, represents the average tax rate of all property in the state and as such it includes all of the real and personal property in the state whether that property was residential, commercial, or

industrial. In fact, it is the substantial secured real property component, which only is subject to the one percent tax for the first time in 1978, that is responsible for the reduction from 10.68 of the prior year. Since Plaintiff's private railroad cars are only personal property, they do not correspond to the class or usage of the variety of properties subject to the 4.79 rate.

3. The proper rate for comparison purposes is 10.63 which represents the average rate that would apply to other commercial and industrial personal property that is taxed on the unsecured rolls of the counties. This rate is equal to and derived from the 1977 rate which was applied to the real property on the secured roll. The average figure, 10.63, does not appear in any publication of the Board because there is no mandate for its calculation.

4. The foregoing explanation was forwarded to Plaintiff's attorney by letter dated December 2, 1980, a copy of which is appended hereto.

I certify and declare under penalty of perjury that the foregoing is true and correct.

IN WITNESS WHEREOF, I have hereunto affixed my signature and the seal of said Board this 6th day of January 1981, at Sacramento, California.

Jeffrey L. Reynods, Chief
Statistical Research and Consulting
Division